Supreme Court, U. S.
FILED
MAY 16 1975
MICHAEL RODAK, JR., CLERK

In the Supreme Court

of the United States

OCTOBER TERM, 1974

No. 74-1274

PORTLAND RETAIL DRUGGISTS ASSOCIATION, INC.,

Respondent,

v.

ABBOTT LABORATORIES, et al,

Petitioners.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR RESPONDENT IN OPPOSITION

ROGER TILBURY
1123 S. W. Yamhill Street
Portland, Oregon 97205

HENRY KANE
220 Park Plaza West
10700 S. W. Beaverton Highway
P. O. Box 518
Beaverton, Oregon 97005
Attorneys for Respondent

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 4-79

No. 74-1274

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1974

PORTLAND RETAIL DRUGGISTS
ASSOCIATION, INC.,

Respondent,

v.

ABBOTT LABORATORIES, et al,

Petitioners.

-

REPLY BRIEF FOR RESPONDENT IN OPPOSITION

-

Argument

-

Petitioners' reply brief concedes the validity of much of the challenged Ninth Circuit decision.

Little remains for this Court to decide.

Petitioners concede that they do not appeal the decision that the following

commercial drug sales are outside of the 15 U.S.C. § 13c exemption:

1. Drug sales to "walk-in" members of the general public, all for use off the hospital premises by individuals not hospital patients;
2. Drug sales to physicals for their private office use;
3. Drug sales to hospital volunteers;
4. Drug sales to <u>families</u> of hospital employees, physicians and volunteers.

Petitioners apparently do not challenge Respondent's citations or the contents of its Appendix.

There is no evidence that the decision, and Petitioners cite none, will "deter" hospital drug dispensing.

Because Respondent was denied discovery of evidence in Petitioners'

exclusive possession (the reason the extensive record is incomplete, disputed and not ripe for appellate review), it cannot accept Petitioners' page 2 estimate that exempt drug sales "approaches 90 percent."

Assuming <u>arguendo</u> the estimate is correct, some 90 per cent of hospital drug purchases will continue to receive the 15 U.S.C. § 13c exemption.

Petitioners claim that the remaining 10 per cent drug sales are "marginal."

The decision held as to the drug sales outside the exemption:

> " * * * The question is not whether the hospitals can continue to provide this useful community service. The question is whether in providing it they may acquire the drugs for such resale at an acquisition price that discriminates against local retail druggists. We hold that they may not." (Pet. A7)

The alleged "non-profit" hospitals can continue under the decision to make the arguendo 10 per cent commercial drug sales outside the 15 U.S.C. § 13c exemption without hindrance or interference.

Respondent has no quarrel with such sales, provided all competitors receive an even break.

The arguendo 10 per cent "marginal" drug sales that are the subject of the petition does not warrant granting of certiorari.

Conclusion

The petition should be denied.

Respectfully submitted,

ROGER TILBURY
HENRY KANE

May 14, 1975.